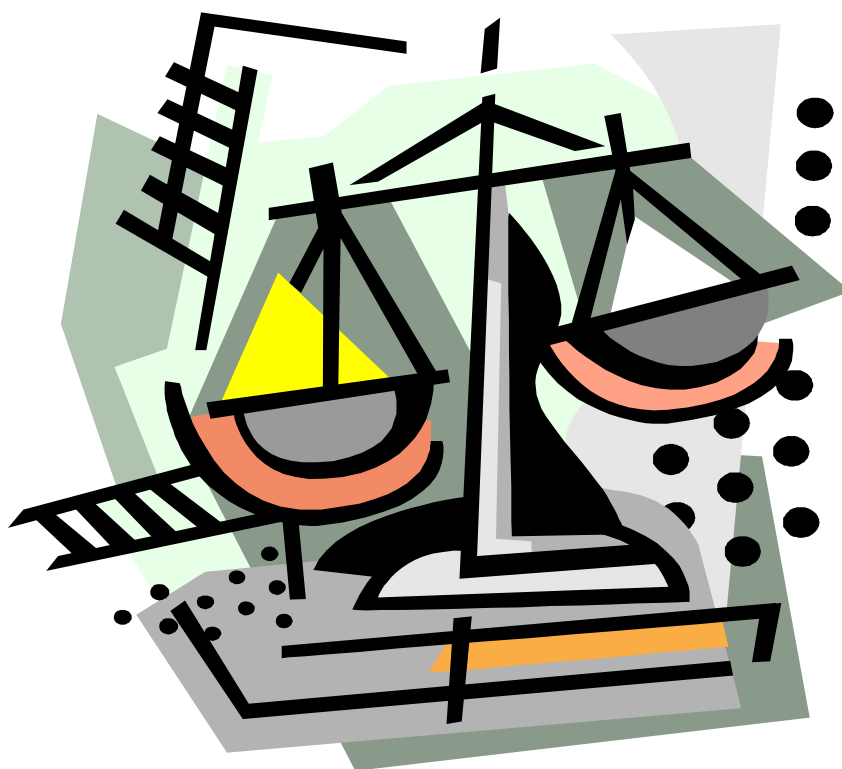


# **Iowa Attorney General Tom Miller**



**2005 Criminal Legislative Package**  
*Using the law to serve and protect the people of Iowa.*

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# **Criminal Law Legislative Proposals**

## **1. Using Drug Treatment to Promote Public Safety in Iowa**

This proposal is the continuation of an ongoing effort by Iowa Attorney General Tom Miller to increase the levels of funding in Iowa for drug treatment and prevention. (The full proposal can be found in Appendix 1.) It is a continuation of an effort begun by the Attorney General with the 2003 legislative session. As the state's top law enforcement official, the Attorney General remains convinced that ***"The number one thing we can do to fight crime is fight drugs and the number one thing we can do to fight drugs is to do a better job with drug treatment."***

Past legislative sessions have shown increasing support for the idea that more use of drug treatment could be a cost-effective public policy alternative. Attorney General Miller believes legislators and the public are becoming more aware of the potential for more drug treatment funding as a cost-effective alternative or supplement to incarceration for certain non-violent offenders. This year's proposal for a \$13.89 million increase in spending for drug treatment and prevention is scaled back in comparison to the prior proposal. While the need for a substantial funding increase is still acute, this year's proposal focuses more specifically on what the Attorney General's office believes are the most crucial areas for improvement.

The Attorney General has made a long-term commitment to this issue and, despite the obvious difficulties of a tight state budget, he will continue to advocate for increased drug treatment and prevention funding for as long as it is necessary.

Drugs are our single biggest crime problem and treatment is the best way to fight drug use. The best public policy tool to reduce crime in Iowa is to increase the availability and duration of substance abuse treatment for adult and juvenile addiction to illicit drugs and alcohol. The Attorney General proposes that resources for substance abuse treatment and related programs should be increased in the amount of approximately \$29 million. These funds would be used to get more people into treatment, and let them stay in treatment long enough to get the maximum benefit.

### **Estimated Funding Outline:**

Community Based Treatment	\$5 million
Corrections Treatment	\$2.5 million
Drug Courts	\$3 million
Jail Programs	\$2 million
State Training Schools	\$390,000
Additional Prevention Grants	\$1 million
Total	\$13.89 million

**A Community-based Treatment.** (Estimated \$5 million increase)

The State Capacities Work Group in 2001 was charged with the task of determining treatment capacity in the state and estimating the costs for increased capacity. The most effective scenario recommended by the group called for an increase in both the number of beds and the length of stay. The increased cost for that maximum scenario was \$13.9 million. We believe that the current system could not absorb that size of increase in a single year because of workforce issues and so we recommend an increase of \$5 million with the hope that subsequent increases would follow for these crucial programs.

**B Corrections System Treatment.** (Estimated \$2.5 million increase)

It is estimated that a \$9 million annual budget targeted for licensed substance abuse treatment could adequately address the need for treatment within the prisons and community corrections OWI residential programs. We are advocating for a first step toward that goal by asking for an increase of \$2.5 million. About \$300,000 of this money should be used to reinstate a centralized substance abuse treatment needs assessment process at the Oakdale reception center.

**C Adult and Juvenile Drug Courts.** (Estimated \$3 million)

Drug Courts for adults, juvenile or both exist in Des Moines, Sioux City, Mason City, Marshalltown, and in the Fourth Judicial District. These programs are funded primarily through federal grants and they are proving their effectiveness. The state should ensure their continuation and expansion.

Drug Courts are one of the most effective things we can do in part because of the intersection that is created between the criminal justice system and the treatment system. The Court serves as a particularly effective incentive for requiring treatment. Defendants hear the message that failure to comply will result in sanctions. Because of this feature, judicial cooperation is crucial to success.

In a 2003 editorial, The Des Moines Register said that the Polk County Juvenile Drug Court is “.... one program that benefits the entire state. It’s a bargain for taxpayers. It works.” The Polk County Juvenile Drug Court has a 75% graduation rate and few referrals back to juvenile court the following year. The program costs as little as \$14 per day.

Similarly an evaluation of the Polk County Adult Drug Court by the state Criminal and Juvenile Justice Planning agency found that graduates had a lower post-program recidivism than comparison groups. The study found that the program reduced overall correction costs.

The Iowa Department of Public Health estimates that placing drug courts to serve 40 adults and 40 juveniles in each of the states eight judicial districts would cost \$2.92 million.

**D Jail-based Treatment Programs. (Estimated \$2 million)**

The programs that provide treatment within the jail setting are effective and reliable in part because of the benefits of treating a confined population. This program is being implemented in Polk, Woodbury and Scott Counties. We believe it has great potential for other of the states larger counties. The Polk County program budget costs \$400,000 per year and serves 30-40 men and 10 women. Placing such a program in five of the larger counties of the state would cost approximately \$2 million.

**E State Training Schools. (Estimated \$390,000 increase)**

This funding would restore drug treatment programs at the state's two juvenile institutions. The 15-year long drug treatment program was discontinued because of state budget cuts in 2001. Since that time drug treatment has been available to only a small number of residents. To restore funding to prior levels, the boys training school at Eldora would receive \$270,000 and the Iowa Juvenile Home at Toledo would receive \$120,000. 81% of the youth entering the State Training School arrive with a substance abuse problem.

**F Statewide Comprehensive Prevention Programming Grants. (Estimated \$1 million increase)**

Additional funding for the Iowa Department of Public Health's Statewide Comprehensive Programming Grant Program will provide an important complement to the increased emphasis on treatment. Under this program 23 grantees provide drug prevention services to all 99 counties of the state on a per capita basis. The programs engage in local prevention activities such as working to reduce college binge drinking or strengthening families to discourage the use of alcohol and drugs. Current state and federal funding for the program is \$3.4 million.

**[See Appendix at end for full explanation of the drug treatment proposal.]**

## **2. Strengthening Support for County Attorneys In Iowa**

Iowa Attorney General Tom Miller is asking the Legislature to help Iowa county attorneys perform their crucial role in Iowa's criminal justice system. The Attorney General's Office asks the Legislature to:

**C Establish a pilot grant program to provide for the shared use of Assistant County Attorneys and other personnel resources among the smaller population counties in Iowa with the goal of enhancing efficiency through the use of greater specialization and innovation.**

County Attorneys perform an essential function in the Iowa criminal justice system and too often they do so while balancing a great number of conflicting demands on their time and skills. They make important, and often controversial decisions, and must do so while balancing the diverse responsibilities of prosecuting criminal cases, advising county law enforcement officials, and

providing civil advice to counties. In addition to the diversity of cases they must handle, they also handle a high volume of cases, particularly in areas such as OWI, domestic abuse, drug prosecution and juvenile cases. Fifty of the ninety-nine county attorneys in Iowa perform this work on a part-time basis.

It is not practical for each of the smaller counties of the state to fully fund legal expertise in all of the diverse legal needs of the county. The Iowa Attorney General's office handles criminal appeals for all 99 counties; provides area prosecutors for major felony cases; assists county attorneys with civil law advice, and provides formal training in a wide range of areas. Federal funds, such as Byrne Grants for multi-county drug prosecutors, had been available to assist with some of these functions but many of those funding sources are being cut or eliminated.

Even this support, however, does not provide sufficient assistance to meet the needs in a variety of areas:

- C      The sheer volume of routine cases in many counties is a significant problem, as OWI, domestic abuse, drug and juvenile cases all consume significant time and make it difficult to undertake a difficult or unusual case when it arises.
- C      Other matters require specialized expertise that may not be available in a particular county. Some issues arise more infrequently but still require specialized knowledge or expertise. These issues might include: post-conviction relief actions; jail inmate litigation or tax assessment appeals to name only a few.

To some extent the problems reflect the same kind of resource problems faced by the state's smallest population counties in other areas -- but the shortage of resources is especially apparent in the areas of public safety and justice.

For these reasons, the Iowa Attorney General's Office is seeking legislation to establish a pilot grant program to provide for the shared use of Assistant County Attorneys and other resources among the smaller-population counties in Iowa.

Details of the proposal:

- C      Amount / Purpose: \$300,000 to fund four grants for innovative pilot projects available to county governments to enhance the functioning of county attorney offices by sharing resources and expertise on a multi-county basis.
- C      Objective: Serve multi-county combinations of smaller-population Iowa counties on a pilot program basis to improve efficiency by encouraging innovation and the use of shared specialized staff such as Victim Witness Coordinators or Assistant County Attorneys with specialized expertise in areas such as post-conviction relief actions, jail inmate litigation and tax assessment appeals.
- C      Funding: Grants would pay the personnel costs of shared staff up to \$75,000 per position including benefits. Counties applying for the funds would be responsible for office space, telephone, office equipment and travel to support the shared specialized personnel.

- C Administration: Grant funds would be administered under terms established by the Attorney General's Office and awarded based on the criteria of efficiency through the use of specialization, innovation and the potential for replication.
- C Eligibility: Multi-county combinations of counties would be eligible to apply to the Attorney General's Office for funding to provide for shared personnel, with priority being given to proposals that would benefit the 63 counties under 20,000 population.
- C Supervision: Guidelines for sharing an assistant would be part of the grant application process, including the designation of a grant administrator. Supervision of the shared assistant in regard to each case and specific duties would reside with the county attorney where that case is being prosecuted.

### **3. Making Pseudoephedrine a Schedule V Drug**

#### **Overview**

Methamphetamine labs are at a record high across all parts of Iowa. Labs represent a unique threat to society in general and law enforcement specifically. Pseudoephedrine is a key ingredient in the making of methamphetamine. The cooking process creates an unprecedented public safety risk due to the potential for explosion, fire, and toxicity. Children living in homes where meth is being cooked face health problems due to exposure to toxic fumes and chemicals. During 2002 and 2003 the Iowa Department of Human Services classified 821 children as victims of abuse due to parents operating a meth lab.

#### **Current law**

Under current law, single-ingredient pseudoephedrine is limited to two packages per purchase. Retailers are also required to take precautions against the theft of pseudoephedrine. These restrictions do not cover multi-ingredient pseudoephedrine.

#### **Proposed change**

This bill would make any product containing pseudoephedrine a schedule V drug. This classification change would require that only pharmacists dispense it. It also requires that the person obtaining products with pseudoephedrine show identification and sign a logbook. It does not require a prescription. This is similar to Oklahoma's laws governing pseudoephedrine. Oklahoma has seen a dramatic drop in methamphetamine labs.

## **4. Changes to DNA Statutes**

### **Overview**

DNA profiling is recognized around the world as one of the most effective ways to pinpoint suspects, identify victims and exonerate the innocent. DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. As technology changes, federal and state laws need to adapt. This bill makes corrective technical changes to Iowa Code section 13.10 as well as HF 2201 that was passed in 2002 which creates an “all felons” database with an effective date that is contingent on adequate funding for the Department of Public Safety (DPS). These changes are based on the DNA Model Act which was proposed by the United States Department of Justice. The Model Act is an attempt to make state DNA law consistent with the provisions of the DNA Identification Act of 1994 (42 U.S.C.A. §14132) and the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546) as well as current policies and procedures for participation in the National DNA Index System (NDIS). DPS and Department of Corrections support the change.

### **Current law**

Since 1989, Iowa law has provided for DNA profiling as a condition of probation, parole, or work release for individuals convicted of the following offenses: (1) Murder; (2) Attempt to commit murder; (3) Kidnapping; (4) Sexual Abuse; (5) Assault with intent to commit sexual abuse; (6) Assault while participating in a felony; and (7) Burglary. See Iowa Code section 13.10. Collection of DNA did not begin until 2002 because collection was dependent on adequate funding. In 2002, HF 2201 created the authority for the DNA profiling of all felons. However, the requisite funds were not appropriated. DNA profiling of all felons will begin in Iowa when the legislature appropriates sufficient funds for DPS.

The collections of these samples are entered into a DNA database that is maintained by DPS’ Division of Criminal Investigation (DCI). Currently, DCI collects DNA samples from individuals and logs them into the state’s DNA database and then forwards samples to the national Combined DNA Index System (CODIS) database. CODIS maintains DNA profiles obtained under the federal, state, and local systems in a set of databases that are available to law enforcement agencies across the country for law enforcement purposes. CODIS can compare crime scene evidence to a database of DNA profiles obtained from convicted offenders. CODIS can also link DNA evidence obtained from different crime scenes, thereby identifying serial criminals.

### **Proposed change**

This bill provides for technical changes to HF 2201 passed in 2002. The changes, based on model DNA legislation, are as follows:

1. Codifies the Establishment of the DNA Database and Databank. Although DCI currently logs the samples into a database and stores samples in a databank, the current law refers only to DNA “profiling.”
2. Creates a Procedure to Collect DNA Samples. DCI is tasked with creating uniform procedures for the collection, submission, identification, analysis and storage of DNA



samples. This legislation also: (a) Limits civil liability of those taking samples; (b) Creates authority for the use of reasonable force to obtain a sample; (c) Creates a class “D” felony for individuals who refuse to provide a sample; (d) Authorizes supervising agencies to assess fees, costs or surcharges to offenders.

3. Provides for Confidentiality Procedures and Expungement of Certain Records. Confidential DNA information may be released to local, county, state or federal agency only for official duties related to law enforcement. Expungement of DNA records is possible if the conviction or adjudication from which the sample was based has been reversed and the case dismissed.
4. Retroactivity. The changes in the bill are retroactive for qualifying offenses if individuals were convicted or adjudicated prior to the effective date and are still incarcerated or on supervised release.
5. Extension of the statute of limitations for sexual abuse when DNA identifies a suspect. This change requires that an information or indictment be filed within ten years after the commission of the crime; or if a suspect is identified by DNA, 3 years from that date.

## **5. Sexually Violent Predators**

### **Overview**

A sexually violent predator is any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality, which makes the person likely to engage in predatory acts, if not confined. This bill amends Iowa Code chapter 229A for the purpose of clarifying what qualifies as a predatory act.

### **Current law**

The law currently provides for the civil commitment of sexually violent predators. The civil commitment of this small but dangerous group is for the purpose of encouraging the full meaningful participation of the sexually violent predators in treatment programs. An individual is considered a sexually violent predator if three conditions are met and a nexus is created between them: 1) The person is likely to engage in predatory acts constituting violent offenses if not confined in a secure facility (“Predatory acts” is defined to mean acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization; 2) The person suffers from a mental disorder; 3) The person has been previously charged with or convicted of a sexually violent offense.

### **Proposed change**

This bill makes a definition modification under chapter 229A as the result of difficulty in establishing a “relationship” between the sexual predator and the victim. This bill changes “relationship” to “contact or interaction.” This change makes it clear that the statute applies to stranger rapists as well as people that establish a relationship with their victims. This bill also increases the penalty for escape or attempted escape from the Civil Commitment Unit to a class “D” felony from a simple misdemeanor.

## **6. Postconviction Relief**

### **Overview**

This bill brings the statute governing the availability of postconviction relief procedures into harmony with other provisions of the Iowa Code. It prevents persons who have been convicted of minor crimes, and who have already had one opportunity to appeal their convictions, from consuming judicial resources in repeated attacks on their convictions.

### **Current law**

Under current law, simple misdemeanors are ordinarily tried before judicial magistrates and district associate judges. A person convicted of a simple misdemeanor has a right of appeal to a district court judge. If the convicted person is unsuccessful in his appeal to the district court, he has no further right to appeal to the Iowa Supreme Court, though he may ask the Iowa Supreme Court to conduct discretionary review.

However, currently there are no limitations on the availability of postconviction relief. If a person has been convicted of a simple misdemeanor and has exhausted his right to appeal, the person may file an application for postconviction relief and, if unsuccessful, may appeal to the Iowa Supreme Court as a matter of right. In other words, current law allows a person convicted of a simple misdemeanor to end-run the statutes which are intended to limit his right of appeal. The cost to the taxpayers of litigating such a claim will be at least \$2000, and may reach \$5000 or more.

### **Proposed change**

The bill makes postconviction relief procedures available to a person who has been convicted of “an indictable offense.” This closes the loophole which has allowed persons convicted of simple misdemeanors to use postconviction relief procedures to make repeated attacks on their convictions. It will conserve judicial resources and make the postconviction relief statute consistent with related statutes.

## **7. Domestic Violence and Firearms**

### **Overview**

Since 1995, around 124 Iowans have been killed in domestic abuse murders, including 16 children. Of these 124 murders, 74 men, women, and children were killed by the use of a gun. This bill would make state law consistent with federal law by prohibiting persons from possessing a firearm who have been convicted of a domestic abuse assault or who are currently the subject of a pending domestic abuse no-contact order.

### **Current law**

Under current Iowa law, only felons are prohibited from possessing firearms. Federal law provides that an individual convicted of misdemeanor domestic assault or an individual subject to a domestic violence no-contact order may not possess firearms. This inconsistency between federal law and Iowa law results in confusion and inconsistent enforcement.

### **Proposed change**

This bill would amend Iowa Code section 724.26 to reference federal law and make it a class “D” felony for anyone to knowingly receive, possess, sell or transport a firearm or offensive weapon who:

- (1) has been convicted of misdemeanor domestic violence or
- (2) is currently subject to a protective order.

This bill would “square up” federal and state law, giving explicit authority to local law enforcement officers and county attorneys to prosecute violators in state district court. The bill authorizes the court to designate a qualified person to take possession of firearms during the time period when the owner is prohibited from possessing a firearm. If the Court designates the county sheriff as the qualified person authorized to take possession, the bill also provides for a \$50 fee paid to the local county sheriff where the firearm will be stored.

### **Federal law**

Possession of a firearm after conviction of a "qualifying" domestic violence misdemeanor is a federal crime under 18 U.S.C. § 922(g)(9). A misdemeanor crime of domestic violence under federal law "qualifies" if the conviction was for an assault committed by a spouse, intimate partner, parent or guardian of the victim that involved the use or attempted use of physical force or the threatened use of a deadly weapon.

In addition to domestic violence convictions, possession of a firearm while subject to a protective order is a federal crime if the protective order "qualifies" under 18 U.S.C. § 922(g)(8). A protective order qualifies if it (1) was issued after a hearing, with notice and opportunity to appear; (2) restrains the defendant from harassing, stalking or threatening the victim; and (3) includes a specific finding of a credible threat, or explicitly prohibits threats of physical force to cause bodily injury.

## **8. Possession of Contraband in Secured Facilities**

### Overview

This proposal would expand the criminal offense of possessing contraband in correctional institutions to include possessing contraband in a jail or a secure facility for the detention or custody of juveniles.

### Current Law

Current law provides that it is a crime to introduce contraband into jails or juvenile detention facilities, but not to possess the contraband.

State v. Mitchell (Iowa Supreme Court Case) concluded that county jails in which contraband was possessed was a “detention facility” and not a “correctional institution” and therefore the defendant’s guilty plea to the offense of possessing contraband in a “correctional institution” lacked a factual basis. As a result, the defendant was entitled to have his conviction vacated and the charge dismissed.

Possession and use of contraband items within jails or juvenile detention facilities poses a serious security and safety threat.

Contraband is defined as items such as knives, razors, intoxicants, or other items which may be fashioned to cause death or injury, or items which may be used to facilitate an escape.

### Proposed change

This proposal would expand the criminal offense of possessing contraband in correctional institutions to include possessing contraband in a jail or a secure facility for the detention or custody of juveniles.

## **9. Restitution**

### Overview

This bill would close a loophole that allows perpetrators to shield their pensions when ordered to pay restitution as the result of a death from a felonious act. Iowa law also does not currently make restitution available as a result of simple misdemeanors, including reckless driving.

### Current law

Under current law, if someone is convicted of a felony in which the act or acts committed by the perpetrator results in the death of a victim and restitution is ordered by the court, the court shall also order at least \$150,000 in restitution to the victim’s estate. See Iowa Code section 910.3B. However, under Iowa Code section 627.6 the restitution is considered a debt that cannot be satisfied by the perpetrator’s pension because pensions are exempted. Also, restitution is not

available to victims of simple misdemeanors under chapter 321, including reckless driving, even though a victim may incur substantial pecuniary damages.

#### Proposed change

This bill would allow the pension of an offender required to pay restitution under Iowa Code section 910.3B to be available to satisfy the \$150,000 obligation to the estate. This change cannot be made retroactive because restitution is part of sentencing and would be considered a violation of the Ex Post Facto clause of the United States Constitution.

## **10. Strangulation**

#### Overview

This bill addresses the need to consistently treat the act of strangulation as a serious offense. The criminal justice system too often treats strangulations as minor incidents because of the lack of visible injury or evidence. In one study of 100 strangulation cases, police could see no visible marks on 62% of the victims.

Strangulation is common in domestic violence cases and has been identified as a prime indicator of lethality. The States of Oklahoma, Nebraska and North Carolina have recently enacted similar statutes.

#### Current law

Under current law, if a perpetrator strangles a victim and no bodily injury results prosecutors could charge crimes ranging from a simple misdemeanor assault punishable by a \$50-\$500 fine and/or 30 days in jail to attempted murder, a class “B” felony.

#### Proposed change

This bill recognizes the seriousness of such acts and would allow prosecutors to pursue appropriate penalties even if no bodily injury resulted. The bill provides that a person is guilty of a Class “C” felony if the perpetrator knowingly impedes the normal breathing or blood circulation of another.

## **Criminal Law Policy Positions**

In addition to these criminal law legislative proposals, Attorney General Miller takes the following positions on criminal law issues:

- A. Support the Iowa County Attorney Association’s proposal on constructive possession.
- B. Support the Iowa County Attorney Association’s proposal to remove the authority of Judges to allow a defendant to make a charitable contribution instead of performing community service.
- C. Support full funding for the creation of the all-felons DNA database created in Iowa Code section 80.40.

## **Appendix 1**

### **Using Drug Treatment to Promote Public Safety in Iowa A Proposal by Iowa Attorney General Tom Miller January, 2005**

- 1 Introduction to the 2005 Proposal.
- 2 As a State, We Are Not Making the Desired Progress in the War on Drugs.
- 3 A Three-prong Approach is Needed to Deal with Drugs: Prosecution, Prevention and Treatment.
  - A Prosecution.
  - B Prevention.
  - C Treatment.
- 4 Drug Treatment Reduces Crime and is Cost Effective.
  - A Substance Abuse is Directly Correlated with Criminal Behavior.
  - B Substance Abuse Treatment Works.
  - C Substance Abuse Treatment Reduces Crime.
  - D Substance Abuse Treatment Increases Employment.
  - E Substance Abuse Treatment Provides Economic Benefits Greater than the Costs.
- 5 The Stigma: Not A Behavior, But A Disease.
- 6 The State System for Substance Abuse Treatment.
  - A Community Programs.
  - B State Correctional Institutions.
- 7 Proposal: The Single Best Thing We Can Do To Fight Crime.

A	Community Based Treatment	\$5 million
B	Corrections Treatment	\$2.5 million
C	Adult and Juvenile Drug Courts	\$3 million
D	Jail-based Treatment Programs	\$2 million
E	State Training Schools	\$.390,000
F	Additional Prevention Grants	\$1 million
	Total	\$13.89 million

## **1 Introduction to the 2005 Proposal.**

This proposal is the continuation of an ongoing effort by Iowa Attorney General Tom Miller to increase the levels of funding in Iowa for drug treatment and prevention. It is a continuation of an effort begun by the Attorney General with the 2003 legislative session. As the state's top law enforcement official, the Attorney General remains convinced that ***"The number one thing we can do to fight crime is fight drugs and the number one thing we can do to fight drugs is to do a better job with drug treatment."***

Past legislative sessions have shown increasing support for the idea that more use of drug treatment could be a cost-effective public policy alternative. Attorney General Miller believes legislators and the public are becoming more aware of the potential for more drug treatment funding as a cost-effective alternative or supplement to incarceration for certain non-violent offenders. This year's proposal for a \$13.89 million increase in spending for drug treatment and prevention is scaled back in comparison to the prior proposal. While the need for a substantial funding increase is still acute, this year's proposal focuses more specifically on what the Attorney General's office believes are the most crucial areas for improvement.

The Attorney General has made a long-term commitment to this issue and, despite the obvious difficulties of a tight state budget, he will continue to advocate for increased drug treatment and prevention funding for as long as it is necessary.

## **2 As a State, We Are Not Making the Desired Progress in the War on Drugs.**

Undoubtedly Iowa remains one of the safest places in America in regard to crime but we are seeing a persistent and growing threat to that security. Drug crimes, or drug-related crimes, continue to occupy a large proportion of time and resources for Iowa law enforcement, prosecutors, and those who provide services to families in need.

Iowa has a particular problem in regard to methamphetamine.

- C The Federal DEA reported 1294 Iowa meth lab incidents in 2003, the 3<sup>rd</sup> largest number of meth labs of any state in the nation. As of November, 2004, Iowa has the 3<sup>rd</sup> highest number of meth lab incidents reported to the DEA during 2004 , and is 2<sup>nd</sup> on a per-capita basis.
- C A federal report on drug treatment admissions says Iowa has the 4<sup>th</sup> highest rate of meth addiction in the nation.
- C The Iowa Division of Narcotics Enforcement reported 1,369 meth lab incidents in calendar year 2004. That number exceed the 2003 record of 1,155 lab responses...or more 3 per day.
- C State narcotics agents confiscated 352 pounds of methamphetamine from communities throughout Iowa in 2003, twice the previous record quantity.

- C The proportion of Iowa's drug treatment adult clientele listing meth as their primary substance of abuse has risen to an all-time high of 15.8%.
- C Over the last two years (CYs 2002 & 2003), the Iowa Department of Human Services classified 821 Iowa children as victims of abuse due to parents manufacturing meth or possessing meth precursor chemicals.

Federal officials have identified Iowa as one of the nation's largest meth markets. As a state we risk an unflattering reputation as one of the meth capitals of the nation. Such a reputation could be devastating to the state in terms of growth and economic development. The damage to our image as a clean, healthy state could be significant. It would be shameful for Iowa to become known as the "meth capital" of the nation - but we face that risk unless we are willing to do some things differently.

While meth is the state's highest profile drug problem, the state's drug problem is not limited to that drug.

- C The number of adults screened/admitted into treatment for marijuana use has increased 38% since 1996. Marijuana accounts for 22.7% of all screenings and admissions to treatment in Iowa. (*Iowa's Drug Control Strategy 2005*)
- C Cocaine/Crack accounted for 5.3% of Iowa drug treatment screenings and admissions. (*Iowa's Drug Control Strategy 2005*)
- C And alcohol remains the drug most often abused by Iowans. 55.6% of all screenings and admissions to treatment in Iowa were for alcohol. (*Iowa's Drug Control Strategy 2005*)

The size of the state's drug problem can also be seen in law enforcement data:

- C Between 1994 and 2002, the rate of reported arrests for drug offenses nearly doubled. (*Iowa's Drug Control Strategy 2005*)
- C There has been a 30.7% increase in the number of indictable misdemeanor and felony drug charges adjudicated by the Iowa District Court from 1999 to 2003. (*Iowa's Drug Control Strategy 2005*)
- C Drug cases represented 25% of the charges and 24% of the convictions on Iowa court dockets in FY2003. (*Iowa's Drug Control Strategy 2005*)

### **3 A Three-prong Approach Is Needed To Deal With Drugs: Prosecution, Prevention and Treatment.**

#### **A Prosecution.**

Law enforcement and prosecutors in Iowa are doing a fine job dealing with an almost intractable problem. Drug shipments across the state on our Interstate highways are being intercepted. Meth labs in Iowa are being discovered. Drug dealers and users are being arrested and prosecuted. However, most law enforcement officers and prosecutors agree that prosecution alone will not solve the drug problem.

C



Drug convictions in Iowa continue to increase: [Iowa's Drug Control Strategy 2005]

1999	8,810
2000	9,595
2001	9,881
2002	11,886
2003	12,635

- C The Criminal Appeals Division of the Iowa Attorney General's Office handles appeals from convictions for drug possession, possession with intent to deliver, manufacturing, drug tax stamp and possession of precursors. These cases continue to occupy a significant portion of the caseload handled by the Iowa Attorney General's Criminal Appeals Division. In 2004, the division completed 115 such cases, which amounted to about 15 percent of the total number of cases closed. A much greater percentage of the total caseload can be factually linked to drug abuse in crimes such as burglaries, assaults and robberies.

## **B Prevention.**

Efforts to control demand through education are prevalent throughout the state but more funding is needed to support these efforts. As stated in "Iowa's Drug Control Strategy 2005", "There are a new generation of evidence-based prevention strategies that, when combined with innovative meth-specific approaches, have proven to be effective in reducing meth use before it gets started. These programs deliver consistent messages sustained over a long period of time, and are aimed at impacting attitudes and behavior toward drugs. But such a long-term payoff requires an upfront investment."

Comprehensive prevention grants from the Iowa Department of Public Health cover the entire state and provide core prevention services in areas such as mentoring, community coalitions and workplace initiatives. In addition the department manages a three-year state incentive grant promoting the use of best practices for 12-17 year-olds to reduce alcohol, tobacco, and marijuana use. These are good programs but they need strengthening.

The total state spending for prevention programs in Iowa in FY2005 is approximately \$26.5 million. (The total of \$26.5 million includes approximately \$6.5 million in state and other funds and \$20 million federal. It should be noted that many of these prevention programs are general in nature and may include areas of emphasis other than drug treatment. The program most relevant to this discussion is the Iowa Department of Public Health Comprehensive Prevention grant program with total funding of \$3.4 million, \$416,000 state money and \$2.9 million in federal funds.) [Iowa's Drug Control Strategy 2005]

## **C Treatment.**

We recommend a significant increase in the funding available for drug treatment in the state. That recommendation is supported by Iowa's Iowa Drug Control Strategy 2005 which says:

“More needs to be done to break the cycle of addiction, which repeats itself over and over in the lives of addicts continually moving between jails and courtrooms and correctional facilities, draining scarce public resources in addition to ruining their own lives and those around them. Research-based substance abuse treatment programming has been shown to be successful, particularly for longer -- albeit more costly -- stays, which is exactly what meth-addicted clients need. A recently-released drug treatment outcomes study by the Iowa Consortium for Substance Abuse Research and Evaluation, showed that the abstinence rate for those in treatment for over 120 days to be about 50% higher than for those in treatment only 31-60 days. But as with prevention, it requires an investment in resources greater than is currently being made.”

Treatment is inadequately funded. According to Iowa’s Drug Control Strategy 2005, the state will spend \$49.1 million treatment dollars in FY2005 (\$22.8 million in state dollars and \$26.3 federal and other). That amount is not adequate to meet the increasing need. Overall, we are doing a good job with the funding that is available but it is not adequate for the numbers needing treatment and for the proper length of stay to get the job done.

This lack of funding for treatment is the reality in Iowa and across America. The Federal Government estimated that 3.5 million people in America need treatment but are not seeking help - roughly the population of Iowa. As many as 70 % of criminal offenders have substance abuse problems.

#### **4 Drug Treatment Reduces Crime and is Cost Effective.**

Increasing the money available for substance abuse treatment will reduce crime and make Iowans safer.

##### **A Substance Abuse is Directly Correlated with Criminal Behavior.**

About 80 % of those in prison have been identified as having a substance abuse problem.

There are generally considered to be three specific links between crime and drugs. First, there is the violence due to the direct effects of a drug on the user (Psychopharmacological). Second, there is the violence committed in order to generate money to buy expensive drugs. (Economic-Compulsive). Third, there is the violence associated with the marketing of illicit drugs such as turf wars (Systemic).

These theories are demonstrated in data from Iowa police and corrections officials. The Arrestee Drug Abuse Monitoring Program (ADAM) report, “Drug Use and Related Matters Among Adult Arrestees, 2001” showed that in Des Moines 56.6 % of arrestees tested positive for drugs and 35 % were at risk for alcohol dependence. In addition, the Iowa Department of Corrections reports that 75-80 % of all correctional clients admit to a history of substance abuse.

This association between drugs and crime is also shown by several other studies:

C Nearly one-quarter (22 %) of federal prison inmates and one-third (33 %) of state

prison inmates reported being under the influence of drugs at the time of their offense [Bureau of Justice Statistics]

- C Among state and federal prison inmates, 27% of those serving sentences for burglary said they committed their offense to buy drugs. [Bureau of Justice Statistics]
- C In the 70% of cases in which the victim formed an opinion, 31% believed the offender was under the influence of drugs or alcohol. [National Crime Victimization Study, 2000]

But perhaps the link between crime and drugs is best described by an Iowan who is herself a recovering alcoholic. In a July 29, 2003 letter to the Des Moines Register, an Iowan wrote, "As a recovering alcoholic, I know the addiction does not go away by only being incarcerated. It prolongs the problem. When the person is released without proper treatment, the addict will use again and again. Each time the crimes can and/or will escalate. They are a danger to themselves, their families and society."

## **B Substance Abuse Treatment Works.**

Research involving numerous large-scale studies consistently demonstrates that treatment has beneficial outcomes. These federally funded and independently evaluated studies include the Drug Abuse Treatment Outcome Study (DATOS), the National Treatment Improvement Evaluation Study (NTIES), the Treatment Outcome Prospective Study (TOPS), and the Drug Abuse Reporting Program (DARP). They have all confirmed drug abuse treatment efficacy through 1-year followup.

According to the National Clearinghouse for Alcohol and Drug Information, U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Administration (SAMHSA), clients served by Federally-funded substance abuse treatment programs were able to reduce their drug use by about 50% for as long as one year after leaving treatment. Use of the clients primary drug declined from 73% to 38%. Cocaine from 40% to 18%. Heroin from 24% to 13%, Crack from 50% to 25%.

These results are verified in Iowa by research conducted by the Iowa Consortium for Substance Abuse Research and Evaluation. The September, 2004 Outcomes Monitoring Report on treatment in Iowa shows high treatment rates and surprisingly it shows particularly high treatment rates for meth users. According to the report, 50.2% of all users had successfully abstained six months after treatment. Importantly, the abstinence percentage for clients who were in treatment longer than 30 days increased in essentially a straight line as the length of stay increased. When the length of treatment exceeded 120 days, the abstinence rate exceeded 60%

Meth users had a surprisingly high abstinence rate of 65.5% six months after treatment. While these numbers do not suggest that treatment is easy - nor necessarily successful on the first attempt - they do suggest that treatment works especially when funding is adequate to provide an adequate length of stay.

Data from the Iowa report showed that 88.7% of clients had not been arrested after treatment- compared to only 30.9% upon admission. And 52.7% of clients were employed full time - compared to 36.1% at admission. When treatment works the rewards to society are significant both in terms of reducing crime and in terms of increasing productivity.

### **C Substance Abuse Treatment Reduces Crime.**

The National Treatment Improvement Evaluation Study (NTIES) is a Congressionally-mandated five year study of the impact of drug and alcohol treatment on thousands of clients in hundreds of treatment centers that received support from the U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Administration (SAMHSA). The results showed:

- C **Selling drugs declined 78%,**
- C **Shoplifting declined 82%,**
- C **“Beating someone up” declined 78%,**
- C **Arrest for drug possession declined 51%,**
- C **Arrests for Any Crime declined 64%.**

More study data indicates that the number of clients receiving the majority of their income illegally declined after treatment. 34% of men earned a majority of their income illegally before treatment and 8% after. Among women the decline was from 30% to 9%.

### **D Substance Abuse Treatment Increases Employment.**

While the primary emphasis of this proposal is on public safety, there are also important implications for the Iowa workforce. All Iowans benefit from having more happy and productive employees in our workforce. We are more productive as a state and there are more of us contributing to society through taxes and other means.

But there are special implications for employment in the area of substance abuse. We must be able to offer a positive alternative to drugs. If we are to appeal to youth to stay away from the destruction of drugs, we must offer them a vision of a productive and happy life without drugs. Employment is an important part of that vision.

According to the National Clearinghouse for Alcohol and Drug Information, the proportion of both male and female clients unable to work due to substance abuse declined after treatment.

- C 14% of men were unable to work before treatment, and that declined to 7% after.

- C 31% of women were unable to work before treatment, 10% after.

Similarly the proportion of both male and female clients currently employed increased after treatment:

- C Men 20% employed before and 47% after,
- C Women 10% before and 29% after.

The Iowa Consortium for Substance Abuse Research and Evaluation at the University of Iowa conducts research for the Iowa Department of Public Health using an Outcome Monitoring System (OMS). Their report issued in September 2004 describes 362 randomly selected Iowa clients who had treatment admission dates during 2002. The report shows:

- C Clients employed full time increased 16.7%
- C Clients employed part time increased 3.9%
  
- C Clients unemployed but looking for employment decreased 9%
- C Clients not in the labor force (not looking) decreased 11.7%
  
- C Clients responding to “no income” category dropped 25.%.  
C Clients responding to “\$1001 to \$2000 for taxable monthly income” increased 8.1%.

**E Substance Abuse Treatment Provides Economic Benefits Greater than the Costs.**

According to research funded by the Center for Substance Abuse Treatment of HHS, drug treatment saves money. “A review of cost benefit studies examining a broad scope of client behavior and associated economic impacts have shown that the benefits of substance abuse treatment outweigh the costs.” The following studies assessed benefits in the first year of treatment.

- C Studies in two Washington state clinics demonstrated that each dollar invested in full continuum care (inpatient treatment) and partial continuum care (intensive outpatient treatment) yielded an average return of \$9.70 and \$23.33 respectively.
  
- C Economic returns of about \$7 for every \$1 spent were also found in studies in California and Oregon state treatment systems.
  
- C Smaller but still notable estimates of \$4 to \$1 returns were found in a representative sample of Federally funded substance abuse treatment demonstration programs.

## **5 The Stigma: Not a Behavior, but a Disease.**

Some people believe that drug and alcohol addiction is simply a matter of choice and that people can “just stop”. It is important to understand substance abuse addiction as a disease instead of a result of personal weakness and moral failing.

Addiction is a common problem in our society. 6.7 million Americans are affected by drug addiction and 13.8 million by alcoholism. These numbers are approximately equal to the number of Americans affected by heart disease (21 million). A study by Peter D. Hart Research released in May, 2004 showed that 63% of Americans said that there had been a “great deal” or “some” impact on their lives as the result of addiction – and 72% of them said the addiction was among a family member.

Addiction is a chronic, ongoing health problem that is not easy to cure. Recovery is a multi-step on-going process. It assumes that relapse will occur.

The stigma regarding addiction is a barrier both to good public policy and also to good treatment. “To cope with stigma, addicted individuals and those in recovery may withdraw, exhibit denial or ambivalence, avoid getting the help they need, discontinue their recovery process, or ‘pass’ by hiding their status as individuals in recovery.” [ Iowa Department of Public Health Report: “Reducing the Stigma of Alcohol and Other Drug Addiction in Iowa”]

This prejudice is in some ways understandable. As a society, we do not want to do anything to condone addiction. The use of stigma creates comforting emotional distance from the issue and simplifies the complexity of the condition. Until we can come to grips with talking about this issue, we will continue to pay a large social cost in crime, medical costs and lost productivity.

## **6 The State System for Substance Abuse Treatment.**

### **A Community Programs Funded through the Iowa Department of Public Health.**

There are about 80 local treatment programs in communities and hospitals across Iowa. About 30 of these are funded with money from the Iowa Department of Public Health while the remainder are funded through Medicaid and private insurance. All are regulated by the IDPH. These numbers include community based programs to which an ex-offender might be referred after discharge but they do not include programs at the state corrections institutions.

40,771 persons reported to alcohol and drug centers in Iowa FY03-04, 60.5% of these referrals came from the criminal justice system. Most treatment is for alcohol followed by marijuana and meth. About 15% of new clients are under the age of 18 which provides special problems in funding and treatment.

These programs provide a continuum of care including:

- C Inpatient hospital type setting for detoxification,
- C Residential 24-hour care for intensive treatment,

- C Halfway House,
- C Outpatient intensive day treatment,
- C Outpatient less intensive treatment,
- C Continuing care.

The programs are facing several funding-related challenges:

- C Keeping up with best practices such as the use of more individualized treatment and wraparound treatment services.
- C Maintaining quality staff because of inadequate pay levels.
- C Finding adequate treatment space to meet the demand.
- C Preventing clients from moving through the system too quickly so that they can receive effective treatment, especially for meth.

## **B State Correctional Institutions Funded through the Department of Corrections.**

Seventy-five to eighty percent of all correctional clients (approximately 36,500 offenders) admit to a history of substance abuse. However, the capacity of Iowa's correctional system to deliver substance abuse treatment has been reduced by 41% since FY2001. The Department of Corrections is capable of treating only half of all those who should receive substance abuse treatment while still incarcerated.

The current estimated expenditure for licensed substance abuse treatment in Iowa prisons is \$4.45 million. This provides "residential" level of care treatment for about 700 offenders and "outpatient" level of care for about 1,000 offenders. Additionally, \$1 million provides for the treatment of nearly 800 OWI offenders in community corrections residential treatment programs

Community-based Correction treatment capacity to serve offenders has been reduced by 50% in TASC (assessment and treatment referral/monitoring) and 34% in OWI programs. Despite on-going increases in the cost of delivering treatment service, the estimated amount of state and federal funds expended for licensed substance abuse treatment has been reduced by 10% in the current year alone.

Corrections officials should be commended for maintaining this level of treatment services while still meeting the other needs of the institutions. In the Corrections Department budget, funds are not earmarked for treatment but are instead considered part of operations. It is to the credit of corrections officials that they have maintained the level of treatment they have in the face of budget cuts.

<b><u>Summary of Corrections Institutions Cuts</u></b>	<b>End of FY01</b>	<b>December, 2004</b>
<b>Daily Capacity: Licensed Prison Program Beds/Slots</b>	843	696
<b>Annual Capacity: Licensed Prison Program Beds/Slots</b>	2276	1766
<b>Licensed Prison Program Staff (FTE)</b>	62.5	49
<b>Community-Based Correction OWI Offenders Served</b>	1190*	777
<b>Community-Based Correction TASC Assessments Completed</b>	2645*	1530

\*1999 data due to data inaccuracy when ICON implemented

These cuts are particularly damaging to the level of intensity needed to provide effective treatment. Some inmates are best served in more cost-effective community based corrections. Others need to receive intensive services while still in prison. It is no bargain to provide diluted, ineffective services. Unfortunately, some of that intensity is being lost because of program eliminations and staffing reductions. For example therapy staff are performing other duties instead of spending full time on therapy.

One particularly impressive example of intensive programming is the 9-month intensive Therapeutic Community approach. The Anamosa State Penitentiary and the Iowa Correctional Institution for Women at Mitchellville each have programs that provide a living environment which is somewhat isolated from the regular prison population and with programming that is approximately nine months in length. Additionally, the Dual Diagnosis Program in the First Judicial District is an American Corrections Association Best Practices Award Winner for comprehensive treatment of offenders in the community with both substance abuse and mental illness diagnosis. These intensive programs are currently funded under federal grants however, the grant funding is potentially jeopardized due to reductions and formula change in the Byrne grant funds.

Federal grant funding that has fueled much of Iowa's offender treatment programming will be reduced and redirected under the omnibus spending measure for 2005 approved by Congress. The omnibus spending measure merges the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (Byrne) and the Local Law Enforcement Block Grant (LLEBG) into a single Justice Assistance Grant Program (JAG), and alters the funding formula in favor of states/communities with higher rates of violent crime (Part 1 Crimes). According to figures provided by the U.S. Department of Justice for the congressionally-approved appropriations package, and analysis conducted by the Iowa Governor's Office of Drug Control Policy (ODCP):



- C Iowa loses \$2,474,564 for state coordinated drug enforcement, treatment and prevention programs (Byrne)
- C Iowa gains \$1,543,656 for law enforcement programs in communities with higher than average rates of violent crime (LLEBG)
- C Iowa will realize a *net* loss of \$930, 999 in federal drug and violent crime control grant funding in 2005

Iowa's correctional system currently receives nearly \$1,000,000.00 in Byrne funds (Dual Diagnosis, First District; Therapeutic Communities, Iowa Correctional Institution for Women and Anamosa State Penitentiary; Drug Courts, Second and Seventh District; Accountability & Outpatient Treatment Failure Program, Sixth District; Restorative Justice, Eighth District). Additionally, Iowa's community-based substance abuse treatment programs serving offender populations in the community receives over \$400,000.00 in Byrne funds. Reductions in Byrne funded treatment programs are very likely in the State FY 2006 due to the federal funding reductions coupled with the formula changes directing how the funds will be spent.

## 7 **Proposal: The Single Best Thing We Can Do To Fight Crime.**

Drugs are our single biggest crime problem and treatment is the best way to fight drug use. The best public policy tool to reduce crime in Iowa is to increase the availability and duration of substance abuse treatment for adult and juvenile addiction to illicit drugs and alcohol. The Attorney General proposes that resources for substance abuse treatment and related programs should be increased in the amount of approximately \$29 million. These funds would be used to get more people into treatment, and let them stay in treatment long enough to get the maximum benefit.

### **Estimated Funding Outline:**

Community Based Treatment	\$5 million
Corrections Treatment	\$2.5 million
Drug Courts	\$3 million
Jail Programs	\$2 million
State Training Schools	\$390,000
Additional Prevention Grants	\$1 million
 Total	 \$13.89 million

### **A Community-based Treatment.** (Estimated \$5 million increase)

The State Capacities Work Group in 2001 was charged with the task of determining treatment capacity in the state and estimating the costs for increased capacity. The most effective scenario recommended by the group called for an increase in both the number of beds and the length of stay. The increased cost for that maximum scenario was \$13.9 million. We believe that the current system could not absorb that size of increase in a single year because of workforce issues and so we recommend an increase of \$5 million with the hope that subsequent increases would follow for these crucial programs.

**B      Corrections System Treatment.** (Estimated \$2.5 million increase)

It is estimated that a \$9 million annual budget targeted for licensed substance abuse treatment could adequately address the need for treatment within the prisons and community corrections OWI residential programs. We are advocating for a first step toward that goal by asking for an increase of \$2.5 million. About \$300,000 of this money should be used to reinstate a centralized substance abuse treatment needs assessment process at the Oakdale reception center.

**C      Adult and Juvenile Drug Courts.** (Estimated \$3 million)

Drug Courts for adults, juvenile or both exist in Des Moines, Sioux City, Mason City, Marshalltown, and in the Fourth Judicial District. These programs are funded primarily through federal grants and they are proving their effectiveness. The state should ensure their continuation and expansion.

Drug Courts are one of the most effective things we can do in part because of the intersection that is created between the criminal justice system and the treatment system. The Court serves as a particularly effective incentive for requiring treatment. Defendants hear the message that failure to comply will result in sanctions. Because of this feature, judicial cooperation is crucial to success.

In a 2003 editorial, The Des Moines Register said that the Polk County Juvenile Drug Court is “.... one program that benefits the entire state. It’s a bargain for taxpayers. It works.” The Polk County Juvenile Drug Court has a 75% graduation rate and few referrals back to juvenile court the following year. The program costs as little as \$14 per day.

Similarly an evaluation of the Polk County Adult Drug Court by the state Criminal and Juvenile Justice Planning agency found that graduates had a lower post-program recidivism than comparison groups. The study found that the program reduced overall correction costs.

The Iowa Department of Public Health estimates that placing drug courts to serve 40 adults and 40 juveniles in each of the states eight judicial districts would cost \$2.92 million.

**D      Jail-based Treatment Programs.** (Estimated \$2 million)

The programs that provide treatment within the jail setting are effective and reliable in part because of the benefits of treating a confined population. This program is being implemented in Polk, Woodbury and Scott Counties. We believe it has great potential for other of the states larger counties. The Polk County program budget costs \$400,000 per year and serves 30-40 men and 10 women. Placing such a program in five of the larger counties of the state would cost approximately \$2 million.

**E State Training Schools.** (Estimated \$390,000 increase)

This funding would restore drug treatment programs at the state's two juvenile institutions. The 15-year long drug treatment program was discontinued because of state budget cuts in 2001. Since that time drug treatment has been available to only a small number of residents. To restore funding to prior levels, the boys training school at Eldora would receive \$270,000 and the Iowa Juvenile Home at Toledo would receive \$120,000. 81% of the youth entering the State Training School arrive with a substance abuse problem.

**F Statewide Comprehensive Prevention Programming Grants.** (Estimated \$1 million increase)

Additional funding for the Iowa Department of Public Health's Statewide Comprehensive Programming Grant Program will provide an important complement to the increased emphasis on treatment. Under this program 23 grantees provide drug prevention services to all 99 counties of the state on a per capita basis. The programs engage in local prevention activities such as working to reduce college binge drinking or strengthening families to discourage the use of alcohol and drugs. Current state and federal funding for the program is \$3.4 million.

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